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**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

IN RE SANDISK SSDS LITIGATION,

This Document Relates To: All Actions.

**Master File No. 3:23-cv-04152-VC**

**JOINT CASE MANAGEMENT  
STATEMENT**

Hearing Date: November 17, 2023

Time: 10:00 a.m.

Courtroom: By Videoconference

Judge: Hon. Vince Chhabria

1           The parties in the related and consolidated actions set forth below jointly submit this  
2 Joint Case Management Statement in accordance with the Standing Order for All Judges of the  
3 Northern District of California (effective January 17, 2023) and Civil Local Rule 16-9. Counsel  
4 for all parties participated in a conference pursuant to Fed. R. Civ. Proc. Rule 26(f) on October  
5 26, 2023. The following is a summary of the issues addressed during that conference.  
6

7           **I. RELATED ACTIONS, SERVICE AND JURISDICTION**

8           On August 15, 2023, Plaintiff Nathan Krum filed a class action complaint in this District  
9 against Defendant Western Digital Technologies, Inc. (“Western Digital”, or “Defendant”),  
10 captioned *Krum v. Western Digital Technologies, Inc.*, Civil Action No.: 23-cv-04152-VC  
11 (N.D. Cal.), seeking to represent a nationwide class of Defendants’ customers who purchased  
12 the 500GB, 1 terabyte (“1 TB”), 2 terabyte (“2TB”) or 4 terabyte (“4TB”) versions of the  
13 SanDisk Extreme Pro SSD line of portable solid-state hard drives designed, manufactured,  
14 distributed, promoted and/or sold by Defendants, including the SanDisk Extreme Pro, Extreme  
15 Portable, Extreme Pro Portable, and WD MyPassport SSD models (referred to herein as the  
16 “Extreme Pro SSD hard drives”). On August 17, 2023, Plaintiffs Matthew Perrin and Brian  
17 Bayerl filed a related nationwide class action complaint in this District against both Western  
18 Digital and SanDisk LLC, captioned *Perrin v. SanDisk LLC et al*, Civil Action No.: 3:23-cv-  
19 04201-VC. Also on August 17, 2023, Plaintiff Saif Jafri filed their class action complaint in  
20 this District, captioned *Jafri v. SanDisk LLC et al.*, Civil Action No. 3:23-cv-04206-VC. On  
21 August 22, 2023, Plaintiff Emilio Pousa filed his class action complaint in this District,  
22 captioned *Pousa v. Western Digital Technologies, Inc.*, Civil Action No. 23-cv-04281-VC. On  
23 September 5, 2023, Plaintiff Fran Bax filed a class action complaint in this District, captioned  
24 *Bax v. Western Digital Corporation*, Civil Action No. 23-cv-04543-VC. On September 12,  
25 2023, Plaintiff Nathan Jackson filed his class action complaint in this District, captioned  
26  
27  
28

1 *Jackson v. Western Digital Corporation, et al.*, Civil Action No. 23-cv-04681-VC. On  
2 September 19, 2023, Plaintiff Tom Gary filed his class action complaint in this District,  
3 captioned *Gary v. SanDisk LLC, et al*, Civil Action No. 23-cv-04815-VC.

4 On October 25, 2023, this Court issued orders consolidating the *Krum, Pousa, Jafri,*  
5 *Perrin, Bax, Jackson*, and *Gary* Actions, and ordering all cases to bear the case number 3:23-  
6 cv-04152-VC. All of the above listed actions thus have been ordered consolidated for all  
7 purposes (collectively, the “Consolidated Actions”).

8  
9 Additionally, on August 29, 2023, Plaintiff Brian McKinney filed a related class action  
10 complaint in the Superior Court of California, Santa Clara County, captioned *McKinney v.*  
11 *SanDisk LLC, et al*, Case No. 23CV422051 (“*McKinney* Action”). The *McKinney* Action was  
12 removed to this Court on October 31, 2023, and has been identified as a related action to the  
13 Consolidated Actions. An Administrative Motion to determine whether the *McKinney* Action  
14 should be related to the Consolidated Actions was filed on November 8, 2023 and granted on  
15 November 9, 2023. And Plaintiff Larkland Studios, LLC, filed a related class action complaint  
16 in the Northern District of California, captioned *Larkland Studios, LLC, v. SanDisk LLC, et al.*,  
17 Case No. 23-cv-05308 (“*Larkland Studios* Action”). The parties in that action intend to also file  
18 an administrative motion to have the *Larkland* action related to the Consolidated Actions.  
19

20 All of the Complaints have been served on the Defendants named therein and  
21 Defendants have appeared in all actions.  
22

23 No presently named defendant remains to be served, although the Complaints do  
24 identify unnamed DOE defendants.

25 Each of the Complaints filed in the above actions alleges the Court has jurisdiction over  
26 the claims at issue pursuant to 28 U.S.C. § 1332(d) and that the exercise of personal jurisdiction  
27 over Defendants is proper as they maintain their principal place of business in this District.  
28

1 Presently there are no issues pending regarding personal jurisdiction.

2 **II. SUMMARY OF FACTUAL ALLEGATIONS**

3 Plaintiffs' Statement:

4 These are class action lawsuits brought on behalf of individuals who purchased the  
5 Extreme Pro SSD hard drives at least since January 2022. SanDisk Extreme Pro SSD hard  
6 drives are portable solid-state drives ("SSDs") that offer high-speed data transfer and storage.  
7

8 According to Plaintiffs, despite Defendants' representations to the contrary, based on a  
9 latent defect in manufacturing and/or design that was not reasonably discoverable by Plaintiffs  
10 and Class members at time of purchase, the SanDisk Extreme Pro SSD portable solid-state hard  
11 drives do not function as reasonably expected. The SanDisk Extreme Pro SSD hard drives,  
12 which are also sold under the WD MyPassport brand, have either a manufacturing defect or  
13 firmware issue (or both) that causes them to disconnect or become unreadable by computers.  
14 Without warning these hard drives have wiped out or lost data stored on them, making the files  
15 stored on them unable to be accessed and users unable or unwilling to use these drives out of  
16 the reasonable concern such data will be lost forever or cost hundreds if not thousands of dollars  
17 to recover.  
18

19 Numerous individuals have publicly complained of data being wiped out with no action  
20 on the part of Class members that resulted in this data being wiped out; their computers not be  
21 able to access these hard drives when they are plugged in; and/or concerns their businesses have  
22 been or will be impacted if the defect manifests, requiring them to spend significant additional  
23 time and resources to prevent such a potential from taking place.  
24

25 Defendants' Statement:

26 Defendants deny the allegations against them. There is no defect in either the  
27 manufacture or design of the subject SSDs, and they perform as designed and as expected by a  
28

reasonable purchaser. While Defendants became aware of some complaints regarding the SSDs beginning in approximately January 2023, they addressed any potential problem by either replacing the complaining customer's SSD when necessary or confirming that the customer's SSD was operating as expected and would continue to do so. Defendants also released a new firmware upgrade in May 2023 that resolved any potential remaining issue for SSDs that were not corrupted.

### III. SUMMARY OF LEGAL ISSUES

#### Plaintiffs' Statement:

Plaintiffs in each of the Consolidated Actions assert similar claims on behalf of various defined classes as well as the following common legal issues, which will be set forth in a Consolidated Amended Complaint:

- (a) Whether Defendants' representations regarding the SanDisk Extreme Pro SSD portable solid-state hard drives were false or misleading or reasonably likely to deceive customers targeted by such statements;
- (b) Whether Defendants breached both express and implied warranties;
- (c) Whether Defendants' failure to disclose that the SanDisk Extreme Pro SSD portable solid-state hard drives did not perform as advertised was material and would be likely to mislead a reasonable consumer;
- (d) Whether the SanDisk Extreme Pro SSD portable solid-state hard drives perform as advertised and represented in terms of their upgrade capabilities;
- (e) Whether Defendants entered into and breached applicable agreements or warranties that are either express or implied by law or equity;
- (f) Whether Defendants engaged in unfair, unlawful, and/or fraudulent business practices or false or misleading advertising regarding the SanDisk Extreme Pro SSD portable solid-state hard drives in violation of Cal. Bus. & Prof. Code § 17200 and 17500, et seq., Cal. Civ. Code §§ 1750 and 1790 et seq., 15 U.S.C. §§ 2301(1) et seq., and the other state and federal laws stated in the various Complaints on file;
- (g) Whether Plaintiffs and the Class have been injured by the wrongs complained of herein, and whether Plaintiffs and the Class are entitled to monetary, injunctive and/or other equitable relief, including damages, restitution,

disgorgement, or other applicable remedies, and if so, the nature and amount of such relief.

Defendants' Statement:

In addition to the legal issues raised above, the following issues are also relevant:

- a) Whether any Plaintiff or putative class member has been injured as alleged;
- b) Whether Plaintiffs have experienced a device failure, or whether they are merely concerned about potential but unrealized future failure;
- c) Whether each Plaintiff relied upon Defendants' supposed representations regarding the SSDs before purchase, and whether reliance is necessary for any of Plaintiffs' claims;
- d) Whether Defendants' attempts to address any purported SSD failure precludes any Plaintiff's or class member's claims;
- e) Whether any Plaintiff or putative class member's claims are barred by the applicable statute of limitations;
- f) Whether any Plaintiff or putative class member failed to comply with their respective state's warranty or consumer fraud statutes;
- g) Whether any Plaintiff's or class member's claims are subject to a class action waiver or agreement to arbitrate;
- h) Whether any of Defendants' other affirmative defenses defeat any Plaintiff's or putative class member's claims;
- i) Whether Plaintiffs' proposed class and sub-classes and claims satisfy Rule 23.

**IV. MOTIONS**

**A. Pending Motions**

Motions relating to appointment of interim class counsel pursuant to Fed. R. Civ. Proc. Rule 23(g) were filed on November 1, 2023, and by Stipulation and order of the Court on November 9, 2023 have been set for hearing on November 17, 2023 at the same time as this Conference. Also pending will be the administrative motion to relate the *Larkland Studios* Action to the Consolidated Actions.

**B. Anticipated Future Motions**

1           Plaintiffs' Statement:

2           Pursuant to the Court's October 25, 2023 Order, any motions directed at a Consolidated  
3 Class Action Complaint are due 21 days after the Consolidated Class Action Complaint is filed,  
4 the filing of which is dependent upon the Court's ruling on the above applications.

5           A motion for class certification will be filed by Plaintiffs once the pleadings are settled  
6 and appropriate discovery has been completed.

7           Both parties may file motions for summary judgment. According to the Court's  
8 Standing Order, the last day for a hearing on such dispositive motions will be roughly 2 to 3  
9 months before the final pretrial conference.

10           Defendants' Statement:

11           Defendants anticipate a potential Rule 12 motion; however, it is premature to state with  
12 certainty because there is currently no operative complaint. They also are considering a  
13 potential motion to stay the case pending arbitration.

14           Defendants also anticipate filing an opposition to class certification, as well potentially  
15 filing Rule 702 motions regarding Plaintiffs' retained experts used in support of class  
16 certification.

17           Defendants also plan to file a motion for summary judgment.

18           **V. AMENDMENT OF PLEADINGS**

19           Plaintiffs' Statement:

20           Pursuant to the Court's October 25, 2023 Order, a Consolidated Class Action Complaint  
21 will be filed 21 days after the Court issues an Order appointing a leadership structure. According  
22 to the Court's Standing Order the last day to amend pleadings will typically be 60 days after  
23 the initial case management conference. However, based on the above timing for filing the  
24

1 Consolidated Class Action Complaint and a responsive pleading, Plaintiffs request that such a  
2 date be set later, to be discussed at the next Case Management Conference.

3 Defendants' Statement:

4 Defendants agree that this issue can be addressed at the next Case Management  
5 Conference.

6  
7 **VI. EVIDENCE PRESERVATION**

8 Preservation letters have been sent to Western Digital, and the parties will discuss the  
9 terms for the ESI protocol and a Protective Order governing the protection of confidential  
10 information using the Northern District of California's model template.

11 **VII. INITIAL DISCLOSURES**

12 The parties have agreed to defer making their initial Rule 26 disclosures until after a  
13 date to be set at the next Case Management Conference.

14  
15 **VIII. DISCOVERY**

16 There will be both party discovery and third-party discovery to retailers of the Extreme  
17 Pro SSD hard drives. Discovery has not yet been served as the parties have recently held their  
18 initial Rule 26 Conference.

19 The parties agree it is premature to set a deadline for the close of fact and expert  
20 discovery as such discovery has yet to be initiated. Per the Court's Standing Order, the parties  
21 understand the discovery cutoff will be roughly 8 weeks before any dispositive motions hearing.  
22 Consistent with the Court's Standing Order, the parties will meet and confer whether to  
23 schedule expert discovery before or after the deadline for hearing motions for summary  
24 judgment.

25  
26 **IX. CLASS ACTION**

27 The parties have reviewed the Procedural Guidance for Class Action Statements.  
28



1        Plaintiffs' Position:

2        A class and/or subclass will be set forth in the Consolidated Class Action Complaint.  
3        Plaintiffs will file a motion for class certification once the pleadings are settled and after  
4        appropriate discovery has been completed. They presently do not have a time frame for class  
5        certification motion briefing, but agree that such timing would be discussed at the next Case  
6        Management Conference in connection with an overall pre-trial and trial schedule.

7        Defendants' Position:

8        Defendants anticipate opposing any motion for class certification, including potential  
9        sub-classes, but they agree that the timing of such motions and briefing can be discussed at the  
10       next Case Management Conference.  
11

12       **X.      RELATED CASES**

13       All related cases have been identified and consolidated before this Court, except for the  
14       *McKinney* Action, which was removed to this Court on October 31, 2023 and is in the process  
15       of being related to and consolidated with these actions, and the *Larkland Studios, LLC* Action.  
16       Administrative motions to relate the *McKinney* and *Larkland Studios* Actions to the  
17       Consolidated Actions either are or soon will be filed.  
18

19       **XI.     RELIEF**

20       Plaintiffs' Position:

21       Plaintiffs will request that the Court order the following relief and enter judgment  
22       against Defendants as follows as applicable for the particular cause of action for the proposed  
23       class and/or applicable sub-classes:  
24

25       1.       An Order for injunctive relief including preventing Defendants from continuing  
26       the practices as set forth herein and refusing from engaging in a corrective advertising  
27       campaign and product recall;  
28

2. A judgment awarding refunds, restitution and/or restitutionary disgorgement in an amount according to proof;

3. A judgment awarding actual, compensatory, general, special, and/or statutory damages to the extent permitted in the asserted Causes of Action in an amount according to proof;

4. An order awarding attorneys' fees and costs incurred in prosecuting this action pursuant to, *inter alia*, Cal. Civ. Code Section 1780(d); Cal. Code Civ. Proc. § 1021.5; 15 U.S.C. § 2301, *et seq.*, and the private Attorney General, common fund and substantial or public benefit theories of recovery;

5. An order awarding pre-judgment and post-judgment interest; and

6. All other relief that the Court deems necessary, just and proper.

Defendants' Position:

Defendants deny that Plaintiffs or any putative class member is entitled to any relief, and they will seek recovery of all fees and costs expended to defend this consolidated action as provided under relevant common and statutory law.

**XII. SETTLEMENT & ADR**

Plaintiffs and Defendants have filed their ADR certifications.

The parties will be prepared to discuss their preferred ADR process at the initial Case Management Conference. The parties preliminarily discussed whether to agree to proceed in private mediation or a settlement conference before a magistrate judge, but have not reached a conclusion as to their positions on this issue.

The parties understand the Court's position that ADR ordinarily should occur within 90 days of the initial Case Management Conference. However, depending on timing of this Conference and scheduling next Case Management Conference that may be premature (see

1 discussion *infra*). However, the parties believe it is important to engage early on in some form  
2 of ADR process.

3 **XIII. OTHER REFERENCES**

4 None at this time, other than that any discovery issues that may be raised that would be  
5 referred to the assigned Magistrate Judge for resolution.

6 **XIV. NARROWING OF ISSUES**

7 None at this time.

8 **XV. EXPEDITED TRIAL PROCEDURES**

9 None at this time.

10 **XVI. SCHEDULING**

11 Based on the status of the pleadings and the pending application for appointment of  
12 interim Class counsel, the parties suggest the Court either continue this Case Management  
13 Conference or hold this initial conference and schedule a follow up Case Management  
14 Conference in approximately 60 days (in late January 2024), since by that time a Consolidated  
15 Amended Complaint should be on file and Defendants' response to that Complaint would either  
16 be on file or soon to be filed.

17 The parties also understand that a final Case Management Conference will be scheduled  
18 roughly four weeks before the close of fact discovery, and that the final pretrial conference will  
19 be held 1 or 2 weeks before the trial.

20 The parties believe it is premature to set other pre-trial dates and deadlines at this time,  
21 as setting such dates will be dependent on timing of any potential pleadings motions and other  
22 motions set forth above.

**XVII. TRIAL**

The parties believe it is premature to set a trial date at this time, as it is dependent on timing of the pleadings and other motions set forth above. While they recognize the Court's position that the trial date will almost always be 12-16 months after the date the original complaint was filed, depending on the timing set forth above a trial date may need to be set after this time frame.

**XVIII. DISCLOSURE OF NON-PARTIES INTERESTED ENTITIES OF PERSONS**Plaintiffs' Position:

Plaintiffs are not aware of any persons or entities with a financial or any other interest in the subject matter in controversy other than the named parties and each shall file or amend statements that provide the statements and disclosures required pursuant to N.D. Cal Local Rule 3-15.

Defendants' Position:

Defendants are not aware of any persons or entities with a financial or any other interest in the subject matter in controversy other than the named parties and subsidiaries and each shall file or amend statements that provide the disclosures required pursuant to N.D. Cal Local Rule 3-15

**XIX. PROFESSIONAL CONDUCT**

The attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California and have stated their agreement to abide thereby.

**XX. OTHER ISSUES TO ADDRESS AT CONFERENCE**

None at this time.

Dated: November 9, 2023

*/s/ Chris W. Cantrell*

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21 **FILER'S ATTESTATION**

22 Pursuant to Civil Local Rule 5.1 regarding signatures, I attest that concurrence in the filing of  
23 this document has been obtained from the other signatories.  
24

25 /s/ Chris W. Cantrell

26 CHRIS CANTRELL